assist the court to calculate the damages properly and reasonably and I pray for an order in terms of my Motion herein."

Defendant's counsel by his affidavit affirmed on July 9, 1981 objected to the application and his grounds are stated as follows: —

"3. It is not true that the said Ong Yoke Eng employed an assistant to carry on the business of the coffee stall after the death of Chuan Im Tit @ Chuan Joon Ting deceased.

4. The business was carried on by Ong Yoke Eng, the widow and her own two children, were assisting her.

5. Both of the children are in their early twenties, one is a male and the other a female.

6. I am advised and verily believe that if the said Ong Yoke Eng had an assistant she should have said so in her evidence on the November 5, 1980 and called the assistant to give evidence."

It is an objection on a question of fact. Looking at the notes of evidence in this case, the plaintiff in cross-examination stated as follows: —

"...I need someone to help. I helped my deceased husband in the business. Since he died it is carried on by myself and my daughter and I employ the assistant. I earn about $40 — $50 per day (gross). Net profit is $20 per day...."

The defendant's objection is therefore devoid of all merit as the plaintiff has said she employed an assistant.

In civil proceedings, it is in the discretion of the court of first instance to recall a witness or call further witnesses after his case is closed. Although under ordinary circumstances it may not be necessary or permissible to allow a witness once examined and dismissed by a party to be recalled for it is expected that the advocate will interrogate him on all material points touching his case, unforeseen situations may develop and there may be also inadvertent omissions. In such a case the court may at its discretion allow a witness to be recalled, but surprise or prejudice to the other party should be guarded against. The objection by the defendant to the application was however not on these anticipated grounds. Nevertheless on allowing the application the court granted liberty to the defendant to cross-examine the recalled witness and further witnesses and call evidence in rebuttal.

Application allowed with costs.

Order accordingly.

Solicitors: *Triptipal Singh; Lim Ewe Hock.*

MANICKAM & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Wong Kim Fatt J.C.) December 1, 1981]

[Seremban — Criminal Application No. 4 of 1981]

Criminal Law and Procedure — Accused charged with gang-robbery — Application for bail refused by Sessions Court — Whether Sessions Court has power to grant bail — Imprisonment for term extending to twenty years — Imprisonment for life — Amendment of Penal Code, s. 395 — Interpretation.

Criminal Law and Procedure — Bail — Discretion of High Court to grant bail — Circumstances under which bail should be granted — Amount of bail bond — Criminal Procedure Code (Cap. 6), ss. 388 & 389.

Jurisdiction — Sessions Court — Bail application — Whether Sessions Court has power to hear.

The five accused, applicants in these proceedings, were charged in the Sessions Court, Seremban, with gang-robbery under section 395 of the Penal Code. Their application for bail was refused by the President of that Court who decided he had no jurisdiction, basing his decision on the judgment of Abdul Razak J. in *Yanasengam* v. *Public Prosecutor.*[1]

The accused applied to the High Court for bail pending their trial fixed in March 1982. Counsel for the accused submitted in view of the amendment to the Penal Code, gang-robbery is no longer punishable with imprisonment for life, while the Deputy Public Prosecutor submitted otherwise.

Held: (1) after the amendment to section 395 of the Penal Code, gang-robbery is punishable with imprisonment for a term which may extend to twenty years, which expression cannot be said or construed to be imprisonment for life;

(2) the Sessions Court has the jurisdiction to hear and decide the application for bail in respect of an offence under section 395 of the Penal Code;

(3) in all cases (whether bailable or not) the High Court has the discretion to grant bail under sections 388 and 389 of the Criminal Procedure Code;

(4) the accused should be granted bail of $4,000 each on one surety.

[**Editorial Note:** We understand that this case is on reference to the Federal Court.]

Cases referred to:-

(1) *Yanasengam & Ors.* v. *Public Prosecutor* [1978] 1 M.L.J. 269.

(2) *Herron* v. *Rathmines & Rathgar Improvement Commissioners* [1892] A.C. 498, 501, 502.

(3) *Lumsden* v. *Inland Revenue Commissioners* [1914] A.C. 877, 924.

(4) *R.P. Kapur* v. *Pratap Singh Kairon* A.I.R. 1964 S.C. 295.

(5) *Sulaiman bin Kadir* v. *Public Prosecutor* [1976] 2 M.L.J. 37, 38.

(6) *Che Su binti Daud* v. *Public Prosecutor* [1978] 2 M.L.J. 162.

CRIMINAL APPLICATION.

K. Gunaretnam for the accused/applicant.

Balia Yusof (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wong Kim Fatt J.C.: This is an application for bail pending trial under section 388(i) of the Criminal Procedure Code by the five accused jointly charged with an offence of gang-robbery under section 395 of the Penal Code. The accused, the applicants in these proceedings, were arrested on October 26, 1981, and were eventually produced before the President, Sessions Court, Seremban, on November 11, 1981, when their application for bail was refused by the

learned President. The trial of the accused was fixed on March 22 and 23, 1982, before the President. It appears that in the Sessions Court, the prosecuting officer did not object to the application for bail and that the decision of the President to refuse bail was based solely on the judgment of Abdul Razak J. in *Yanasengam & Ors.* v. *Public Prosecutor,*[1] a case involving gang-robbery, in which the learned judge dismissed the application for bail.

The answer to the matter before me depends on the interpretation of the words "imprisonment for a term which may extend to twenty years" appearing in section 395 of the Penal Code.

Section 388(i) of the Criminal Procedure Code dealing with bail pending trial reads as follows:

"388. (i) When any person accused of any non-bailable offence is arrested or detained without warrant by a police officer or appears or is brought before a court, he may be released on bail by the officer in charge of the police district or by such court, but he shall not be so released if there appears reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life:

Provided that the court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail."

Before its amendment in 1976, section 395 of the Penal Code read as follows:

"395. Whoever commits gang-robbery shall be punished with imprisonment for life, or for a term which may extend to ten years, and shall also be liable to whipping."

In 1976, by the Penal Code (Amendment and Extension) Act, 1976 (Act A327), which came into force on March 31, 1976 (P.U.(B) 139/76), considerable amendments were made to the Penal Code (F.M.S. Cap. 45), which was extended to have effect throughout Malaysia, repealing at the same time the Penal Code of Sabah and the Penal Code of Sarawak. One of these amendments affects section 395 of the Penal Code in which the words "imprisonment for life, or with imprisonment for a term not exceeding ten years" were replaced by the words "imprisonment for a term which may extend to twenty years". As amended, section 395 of the Penal Code now reads:

"395. Whoever commits gang-robbery shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping."

Encik Gunaretnam, learned counsel for the accused, submits that in view of the amendment, gang-robbery is no longer punishable with life imprisonment and therefore the learned President has the power to grant bail. Encik Balia Yusof, the learned Deputy Public Prosecutor, on the other hand, contends that the Legislature has never intended to distinguish between "imprisonment for life" and "imprisonment for a term which may extend to twenty years", so that the net effect of the amendment is that gang-robbery is still punishable with life imprisonment, in which case the Sessions Court has no power to grant bail.

In amending section 395, the Legislature did not amend section 57 of the Penal Code, which still reads as follows:

"57. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years."

Neither was section 3 of the Criminal Justice Ordinance, 1953, amended. Section 3 of this Ordinance, which abolished penal servitude and whipping with a cat-o'-nine tails, reads:

"3. Where any person is treated as having been sentenced or is hereafter sentenced to imprisonment for life, such sentence shall be deemed for all purposes to be a sentence of imprisonment for twenty years."

It may be noted that after the amendment section 130A(b) of the Penal Code expressly stipulates that imprisonment for life means imprisonment until the death of the person on whom the sentence is imposed, in contradistinction with imprisonment for twenty years. In section 125A of the Penal Code, the custodial sentence thereunder is imprisonment for life (which in the context means the natural life of the accused as in the case of imprisonment for life under the Firearms (Increased Penalties) Act, 1971) or, in the alternative, imprisonment for a term which may extend to twenty years. Thus, besides death sentence, we have now under our law (1) imprisonment for life until the death of the convicted accused (a sentence unknown to Malaysian criminal law until very recent years), (2) imprisonment for life reckoned or deemed to be twenty years, and (3) imprisonment for a term which may extend to twenty years. The question for determination is whether the expression "imprisonment for a term which may extend to twenty years" is the same as "imprisonment for life".

Although section 57 of the Penal Code and section 3 of the Criminal Justice Ordinance provide that imprisonment for life shall be reckoned or deemed to be imprisonment for twenty years, I do not think, as a corollary or logical conclusion, it can safely be said or construed that if a person is punished with imprisonment for a term which may extend to twenty years, he is punished with imprisonment for life. The words of section 395, as amended, are plain and clear. The maximum custodial sentence now for gang-robbery shall not exceed twenty years under section 395. To hold that a prison term not exceeding twenty years (that is a term from anything up to twenty years) is synonymous with or equivalent to imprisonment for life is to overstretch the rule of construction. It is a well-established principle that a penal legislation such as the Penal Code should be construed strictly, rather than liberally. In construing the clear provisions of the amended section 395, I need not take into account the explanatory statement to the Bill except for the limited purpose of understanding the background and antecedent state of affairs leading to the legislation. Prior to the amendment, the court could either sentence the accused to imprisonment for life or to a maximum term of ten years. Ironically, it could not pass a sentence of between ten and twenty years.

In *Herron* v. *Rathmines & Rathgar Improvement Commissioners,*[2] at 501 and 502, Lord Halsbury L.C. in the House of Lords concurred with what Fitz-Gibbon L.J. had that "we cannot interpret the Act by any reference to the Bill, nor can we determine its construction by any reference to its original form".

In *Lumsden* v. *Inland Revenue Commissioners*,[3] at 925, Lord Parmoor said:

"A statute is the expression of the will of the Legislature, and it is the duty of the courts to give effect to the language in which the will of the Legislature has been expressed. It is not the function of courts of law to entertain questions of policy...."

He also cautioned at page 924 that "care must be taken that this [method of interpretation] is done not to make law, but only to expound it".

The Indian Supreme Court in *R.P. Kapur* v. *Pratap Singh Kairon*,[4] had decided that the Bill, the alterations made in it during its passage through the Committee, the Statement of Objects and Reasons and the Report of the Select Committee could not be legitimately taken into account in construing an absolutely clear provision.

In the circumstances, I hold that the Sessions Court has the jurisdiction to hear and decide the application under section 388(i) of the Criminal Procedure Code for bail by the accused (all over 18 years of age), who are charged under section 395 of the Penal Code. It must not be misunderstood that by the amendment to the Penal Code, the Legislature is viewing the offence of gang-robbery less seriously, at the expense of the administration of justice. With the amendment to the Subordinate Courts Act, 1948 (Revised 1972) by Act A434 with effect from July 1, 1978, the Sessions Court has been entrusted with increased criminal jurisdiction to try many offences hitherto triable by the High Court. The Sessions Court now has the jurisdiction to try all offences other than offences punishable with death (section 63) and may pass any sentence allowed by law other than the sentence of death (section 64), which falls within the jurisdiction of the High Court. Since the President of the Sessions Court has the jurisdiction to try the accused charged with gang-robbery, I see no reason why he should not in principle have the jurisdiction to perform the less arduous duty of deciding whether or not to grant bail pending trial before him. As Harun J. observes, "As a matter of principle, I think a court that has been conferred with jurisdiction to try a case should also be given discretionary powers to grant bail. This would be in keeping with the provisions of the Criminal Procedure Code, where magistrates possess the unfettered power to grant bail in all cases including cases not triable by them, except offences punishable with death or life imprisonment where only a judge may grant bail." (*Sulaiman bin Kadir* v. *Public Prosecutor*[5] at 38).

The law is clear that the High Court in its absolute discretion may under sections 388 and 389 of the Criminal Procedure Code grant bail to an accused person pending trial after his application for bail has been refused by the lower courts, even if an offence with which the accused is charged is punishable with death or imprisonment for life. The judgments of Harun J. in *Sulaiman bin Kadir* v. *Public Prosecutor*, and Gunn Chit Tuan J. in *Che Su binti Daud* v. *Public Prosecutor*,[6] are in point.

In cases where there appear reasonable grounds for believing that the accused has been guilty of an offence punishable with death or imprisonment for life, because of the seriousness of the offence charged, no bail should be granted, unless the accused satisfies the High Court that there are exceptional and special grounds justifying the granting of bail. In such an event, the burden is on the accused. In other cases of lesser charges, bail should, in my opinion, normally be granted as a matter of course, unless the prosecution can satisfy the court that in the interest of justice bail should not be granted. In all cases (whether bailable or not bailable) the High Court has the discretion to grant bail under sections 388 and 389 of the Criminal Procedure Code, but, as has often been said, that discretion must always be exercised judicially. The points for consideration in granting or refusing bail may be found on page 551 of *Mallal's* Criminal Procedure Code (4th Edition).

The amount of every bail bond should not be excessive but be reasonable in the circumstances of the case as being sufficient to secure the attendance of the person arrested or charged with an offence. An excessive bail bond may defeat the granting of bail as the accused may find difficulty in getting a bailor acceptable to the court. The reason arises from the principle and basis of our criminal law that the accused is presumed to be innocent until proven guilty.

The present application for bail is supported by the affidavits of the five accused. The Deputy Public Prosecutor did not file an affidavit in opposition. The affidavits of the accused disclose *inter alia* that their trial is some four months from now, that they will not abscond or tamper with prosecution witnesses and that they have no previous convictions. These to my mind merit the granting of bail. As to the bail bond, learned counsel for the accused suggested a figure of $3,000 each, while the learned Deputy suggested $5,000.

In the circumstances of the case, the accused should be granted bail in the sum of $4,000 each in one surety, the bail bond to be executed in the Sessions Court, Seremban.

Order accordingly.

Solicitors: *Gunaretnam & Co.*

LEE BOON KIAT v. NG SING

[O.C.J. (Wong Kim Fatt J.C.) December 14, 1981]
[Seremban — Civil Suit No. 18 of 1980]

Damages — Multiple injuries — Leg amputation — Paralysis of shoulder — Cost of artificial limb — Pain and suffering — Future earnings — Special damages.

On October 7, 1979, the plaintiff, Lee Boon Kiat, was riding motorcycle No. NH 1442 along the Linggi-Rantau Road, Negeri Sembilan, from the direction of Linggi towards Rantau when at or near 14¼ m.s. of the road, he was run into and knocked down by motor car No. MC 6166 driven by the defendant, Ng Sing, along the road travelling in the opposite direction. The defendant admitted liability. As a result of this accident the plaintiff suffered the following injuries:—

(a) Fracture of lower ⅓ of left femur.

(b) Laparotomy and surgical control of bleeding from the stomach wall.

(c) Compound comminuted fractures of the right tibia